IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.756 OF 2004

Dattu Krishna Ganjve ...Appellant

vs.

The State of Maharashtra & Ors. ...Respondents

Mr.R.S.Apte with Mr.A.A.Garge for the Appellant
Mr.K.K.Tated,A.G.P. for Respondent Nos.1 and 2

CORAM: A.S.OKA,J.
DATE : MARCH 17,2005.

P.C.:

1. Heard Shri Apte for the Appellant and Shri Tated, learned A.G.P. for the Respondent Nos.1 and 2. The Second Appeal is by the original Plaintiff No.1. The suit was filed by the Appellant and Respondent No.4 for perpetual injunction restraining the Respondent no.1 from interfering with their possession over land bearing Gat No.442 and more particularly described in paragraph No.1 of the plaint. The contention of the original Plaintiffs is that they along with the Respondent No.3 are the owners of the said land bearing Gat No.442 and the Respondent No.1 as well as employees of the Revenue Department are trying to interfere with their possession.

2. A written statement was filed by the Respondent No.1 and 2/Defendant Nos.1 and 2 in which it is not disputed that the original Plaintiffs are owners of the land bearing Gat No.442. The contention raised in the written statement is that the Gat

No.442 is situated on the Eastern side of land bearing Gat No.372 which is a forest land and the Plaintiffs have encroached upon the forest land and by seeking injunction they are trying to protect their possession of the encroached portion of the forest land.

3. The Trial Court dismissed the suit. The Trial court held that there is no dispute as regards title of the original Plaintiffs to the land bearing Gat No.442 admeasuring 8 hectare 9 ares. The dispute is regarding the encroachment made by the Appellant on the adjacent land bearing Gat No.372. After considering the oral and documentary evidence on record, the Trial Court accepted the case made out by Respondent Nos.1 and 2 that original Plaintiffs have made encroachment on the forest land.

4. An Appeal preferred by the original Plaintiffs to the District Court was also dismissed. The Appellate Court held that the Plaintiffs ought to have lead evidence of their title in respect of the disputed portion of the land.

5. Shri Apte for the Appellant-original Plaintiff No.1 submitted that the real dispute which was to be decided in the suit was regarding boundary between land bearing Gat No.442 and 372. He submitted that the said dispute could have resolved only by appointing a competent Survey Officer as a Court Commissioner. He placed reliance on Judgment of learned

Single Judge reported in 2004 (2) Mh.L.J. page No.722 (Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade).

6. Shri Tated, learned A.G.P. for the Respondent Nos.1 and 2 relied upon the subsequent events which are set out in the Affidavit filed by Shri K.P.Kadu, Range Forest Officer, Manchar, Taluka Ambegaon, District Pune. It is stated in the Affidavit that T.I.L.R. measured the suit land and a map was prepared. A copy of the said map is annexed to the Affidavit. He further stated that on 6th June 2004 the Appellant gave a statement admitting that he has encroached upon the forest land and on the same day he has handed over the peaceful possession of the encroached portion admeasuring 2.65 H out of Gat No.372 to the Respondent Nos.1 and 2. It is stated that possession receipt was also executed and panchnama is also made. Copies of statement of the Appellant, possession receipt and panchnama are annexed to the Affidavit in reply. He therefore submitted that nothing survives in the Appeal and the same need not be entertained.

7. The son of the Appellant has filed Affidavit dated 7th March 2005. He stated in the Affidavit that the Civil Application for interim relief in the Second Appeal was affirmed on 7th June 2004. He stated that his Advocate had drafted the said Civil Application before 6th June 2004 and that is the reason why there was no reference to the

subsequent events which have taken place on 6th June 2004. He has tendered apology for not disclosing the subsequent events in the Civil Application for interim relief. Considering the explanation in paragraph No.4 and 5 of the Affidavit, I am satisfied that subsequent events which took place on 6th June 2004 were not referred to in the Civil Application as the same was drafted by the Advocate for the Appellant before 6th June 2004. The explanation given by the Appellant and apology tendered is accepted.

8. The statement of the Appellant annexed to the Affidavit by Respondent Nos.1 and 2 dated 6th June 2004 records that he has handed over the possession of the encroached portion of land bearing Gat No.372 and area of the encroached portion of 2 hectare and 65 ares. He has stated that there is a house constructed on encroached portion. There is also a bore well made by him. He stated in his statement that it was not possible for him to remove the construction material used in the house and material used for making bore well and therefore he will remove the construction material and the material used for bore well before 6th July 2005. There is a possession receipt acknowledging that he has handed over possession of the land bearing Gat No.372 to the Respondent Nos.1 and 2. There is a panchnama which records the said fact and the description of the encroached portion handed over to the Respondent Nos.1 and 2. Perusal of the Affidavit dated 7th March 2005 of the son of the Appellant shows that there is no

dispute about execution of the said documents annexed to the Affidavit-in-reply of the State Government. It is not disputed that the possession of the encroached portion out of land bearing Gat No.372 is handed over by the Appellant to the Respondent Nos.1 and 2. The only dispute raised in the Affidavit is that the measurements made by the T.I.L.R. of land bearing Gat No.372 are not correct.

9. The Respondent Nos.1 and 2 never disputed the fact that the Appellant is the owner of the land bearing Gat No.442 and original Plaintiffs were in possession of the said land. The prayer for perpetual injunction was opposed mainly on the ground that the Plaintiffs were trying to protect the possession in respect of the encroached portion out of Gat No.372 which is the forest land by obtaining order of injunction.

10. It is very clear from the Affidavits which are filed by the Appellant and Respondent No.1 that the entire encroached portion out of gat No.372 is now vacated by the Appellant and Respondent No.1 is in possession thereof.

11. The suit was filed by expressing apprehension that the Respondent Nos.1 and 2 will disturb the possession of the original Plaintiff over the land bearing Gat No.442. As stated earlier the title and possession of the Plaintiffs over the land bearing Gat No.442 as described in paragraph No.1 of

the plaint was not disputed by Respondent Nos.1 and 2 and now encroached area out of Gat No.372 has been handed over by the Appellant to the Respondent Nos.1 and 2 to their satisfaction. Thus, the cause of action for filing the suit does not survive. There is no reason to grant any relief as regards the land bearing Gat No.442 as the title of the original Plaintiffs was never disputed by Defendant Nos.1 and 2.

12. In view of what is stated above, there is no reason to entertain the Second Appeal and the same is dismissed with no order as to costs. If the Appellant has not removed the construction material used in the house constructed and the material used for the bore well made on the encroached portion till today, he will be free to to do so within a period of four weeks from today.

13. Parties to act upon an authenticated copy of this order.

JUDGE.